

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Adopted Good Cause
Exempt Rules of the State Department of
Natural Resources Relating to Removing the
Spearing Ban on Cass Lake, Beltrami
County

**ORDER ON REVIEW
OF RULES UNDER
MINN. STAT. § 14.386
AND MINN. R. 1400.2400**

This matter came before Administrative Law Judge Eric L. Lipman upon the application of the Minnesota Department of Natural Resources for a legal review under Minn. Stat. § 14.386.

On September 13, 2011, the Minnesota Department of Natural Resources filed documents with the Office of Administrative Hearings seeking review and approval of the above-entitled rules under Minn. Stat. § 14.386 and Minn. R. 1400.2400.

Based upon a review of the written submissions by the Department, and for the reasons set out in the Memorandum which follows below,

IT IS HEREBY ORDERED THAT:

1. The rules were adopted in compliance with the procedural requirements of Minnesota Statutes, Chapter 14, and Minnesota Rules, Chapter 1400.
2. According to the 2011 Laws of Minnesota, First Special Session, Chapter 2, Article 5, Section 68, the Department has the statutory authority to adopt these proposed rules using the exempt rulemaking process.
3. The adopted rules are **APPROVED**.

Dated: September 27, 2011

s/Eric L. Lipman
ERIC L. LIPMAN
Administrative Law Judge

MEMORANDUM

The 2011 Laws of Minnesota, from the Minnesota Legislature's First Special Session, included the following provision:

Sec. 68. **RULEMAKING; SPEARING ON CASS LAKE.**
The commissioner of natural resources shall amend Minnesota Rules, part 6264.0400, subpart 69, to allow a person to take fish by spearing on Cass Lake. The commissioner may use the good cause exemption under Minnesota Statutes, section 14.388, to adopt rules under this section, and Minnesota Statutes, section 14.386, does not apply except as provided under Minnesota Statutes, section 14.388. Until July 1, 2016, the commissioner shall not adopt restrictions on spearing northern pike on Cass Lake under Minnesota Statutes, section 97C.001 or 97C.005.

The legislation that contained this provision was passed by both houses of the legislature and signed by Governor Dayton. See, 2011 Laws of Minn., 1st Spec. Sess., Chapter 2, Article V, Section 68 (July 20, 2011).

In order to meet the mandate to amend Minnesota Rules so as "to allow a person to take fish by spearing on Cass Lake," the Department proposes repealing the regulation (Minn. R. 6264.0400, Subp. 69) that prohibits this activity.

During the five-business day comment period, the Office of Administrative Hearings received 54 comments from interested members of the public. Each of the commentators wrote in opposition to the policy choice made by the Minnesota Legislature to permit spear fishing on Cass Lake. Many of these commentators urged this Office to maintain the ban on spear fishing notwithstanding the law enacted in July of 2011. None of the comments offered a reason to doubt that the Department's use of the good cause exemption process to repeal the regulation was itself unlawful.

The Department has properly invoked the good cause exemption process. Not only was the use of this process expressly authorized in the underlying legislation, the repeal of the rule incorporates the specific changes set forth in the statute and requires no additional interpretation of law. See, Minn. Stat. § 14.388, subd. 1 (3).

Because of the volume of public comments in this matter, however, it bears mentioning here that Executive Branch officials – whether they serve in the Department of Natural Resources or as judges in the Office of Administrative Hearings – are not permitted to re-write duly enacted state laws. To the contrary, Executive Branch officials are bound to "take care" that the laws that have been enacted are "faithfully executed." See, Minn. Const., Art. V, Sections 1 and 3.

The appropriate result, therefore, is to approve the adopted rules.

E. L. L.